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No. 82-381

IN THE

Supreme Court of the United States

October Term, 1982

BETHLEHEM STEEL CORPORATION AND INSURANCE COMPANY OF NORTH AMERICA,

Appellants,

v.

RHODE ISLAND TURNPIKE AND BRIDGE AUTHORITY,

Appellee.

On Appeal From The
Supreme Court of Rhode Island

MOTION TO DISMISS

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MOTION TO DISMISS

Appellee, Rhode Island Turnpike and Bridge Authority (Authority), pursuant to Rule 16 (1)(b) of the Rules of the Supreme Court of the United States moves the Court to dismiss the appeal herein on the following grounds; to wit,

1.) The appeal does not present a substantial federal question; and,

2.) The judgment rests on an adequate non-federal basis.

STATEMENT

The Authority is in substantial agreement with the "Statement of the Case" presented by the appellants in their "Jurisdictional Statement" at pages 5, 6, 7 and 8 thereof and adopts the same as its own, with the exception of the obvious typographical errors appearing in the fourth and second from the last line on page 7 thereof, where the date references should be 1981 and not 1982.

QUESTION PRESENTED

Does a state statute which increases the rate of prejudgment interest in state civil actions, and which provides that it "shall be given retroactive as well as prospective effect and shall apply to all cases pending upon the effective date" of the statute, violate any provision of the United States Constitution and the Amendments thereto?

ARGUMENT

I

THE APPEAL DOES NOT PRESENT A SUBSTANTIAL FEDERAL QUESTION.

In their Jurisdictional Statement, the appellants have ingeniously attempted to create a substantial federal question when in reality none exists. They state at page 8 of their Jurisdictional Statement that "... there is substantial conflict among decisions of both state and federal courts" concerning "the question of the validity under the Due Process Clause and the Contract Clause of the United States Constitution of a state legislative enactment that retroactively alters a person's liability" and that "the prior decisions of this Court fail to provide adequate guidance". Nothing could be further from the fact.

Funkhouser v. *Preston Co.*, 290 U.S. 163 (1933), which the appellants have pointedly and understandably ignored but for one sentence on page 15 of their Jurisdictional Statement, is

completely dispositive of their contentions. In that case a New York statute providing for interest on unliquidated damages caused by breach of contract was held to be applicable to a verdict rendered after its enactment, with respect to a claim arising before its enactment. There the same Contract Clause and Due Process Clause arguments were rejected by this Court as are now being trundled forth by the appellants in their effort to create a substantial federal question. If ever there was a question, it has been resoundingly and dispositively answered by *Funkhouser,* supra. At pages 167 and 168 of 290 U.S. Mr. Chief Justice Hughes, speaking for a unanimous Court, said:

> "While it is the duty of this Court, where the contract clause is invoked, to determine for itself what the contract is and whether it has been impaired, we find nothing requiring us to reach a conclusion different from that of the Court of Appeals. The statute in question concerns the remedy and does not disturb the obligations of the contract. *Sturges* v. *Crowninshield* 4 Wheat. 122, 200; *League* v. *Texas,* 184 U.S. 156, 158; *Waggoner* v. *Flack,* 188 U.S. 595, 601-603; *Bernheimer* v. *Converse,* 206 U.S. 516, 530; *Henley* v. *Myers,* 215 U.S. 373, 385. Compare *Shriver* v. *Woodbine Bank,* 285 U.S. 467, 474. The contractual obligation of appellants was to take and pay for the described articles; and the law, in force when the contract was made, required that in case of breach appellants should make good the loss sustained by the appellee. The ascertainment of that loss, and of what would constitute full compensation, was a matter of procedure within the range of due process in the enforcement of the contract. 'To enact laws providing remedies for a violation of contracts' and 'to alter or enlarge those remedies from time to time', was within the competency of the legislature. *Waggoner* v. *Flack,* supra. The mere fact that such legislation is retroactive does not bring it into conflict with the guarantees of the Federal Constitution (*League* v. *Texas,* supra, p. 161), and when the action of the legislature is directed to the enforcement of the obligations assumed by the parties and to the giving of suitable relief for non-performance, it cannot be said that the obligations of the contract have been impaired. The

> parties make their contract with reference to the existence of the power of the State to provide remedies for enforcement and to secure adequate redress in case of breach. *Henley* v. *Myers*, supra."

He concluded at page 169:

> "The decisive point in the instant case is that the provision for the enlarged remedy was consistent with the substantial rights of the parties under their contract and cannot be regarded as an unreasonable exercise of legislative power."

The appellants, faced with this clear rejection of their fundamental position, seek to have this Court nevertheless find the Rhode Island interest statute defective because, first, it allegedly achieves an arbitrary and capricious result and is without a rational basis, and secondly, because it constitutes an unwarranted and irrational upsetting of their "settled expectations". See Jurisdictional Statement pages 11 and 15, et seq.

The matters of arbitrariness, capriciousness and unreasonableness were all dealt with by both the Trial Justice and the Rhode Island Supreme Court. In his "Supplemental Decision Relating To Computation of Interest" the Trial Justice remarked:

> "In essence the Legislature is providing as an incident to the right of a plaintiff to compensation an increment of interest as a recompense for the delay incurred in coming into possession and enjoyment of sums due to which the party is determined to be entitled. In the present context of money markets, it can scarcely be said that a 12% rate of interest is unreasonable."

See page 60 of the Appellants' Appendix.

The Rhode Island Supreme Court, relying on *Funkhouser*, supra, said at page 757 of 446 A2d (See, also page 9 of the Appellants' Appendix.)

> "Finally, Bethlehem turns to the constitutions of both the United States and the State of Rhode Island and argues that a retroactive application of §9-21-10 amounts to denial of its due-process rights. A ready

> response to such assertions was made about a half century ago in Funkhouser v. J. B. Preston Co., 290 U. S. 163, 168, 54 S. Ct. 134, 136, 78 L. Ed. 243, 246 (1933), where the United States Supreme Court, in upholding the retroactive application of a New York statute calling for interest, noted that the payment of interest was an appropriate subject for legislative action in that it added 'an amount commonly viewed as a reasonable measure of the loss sustained through delay in payment.' Thus, prejudgment interest serves two purposes: it promotes the early settlement of claims and compensates one for his inability to utilize funds rightly due him. Here, the trial justice, in relying on Funkhouser, remarked that in the present context of money markets 'it can scarcely be said that a 12 percent rate of interest is unreasonable.' We echo those sentiments."

In a desperate effort to taint the Rhode Island interest statute with irrationality the appellants assert at pages 14 and 15 of their Jurisdictional Statement:

> "And because the retroactive application of the statute from the date of accrual of the cause of action would have the effect of applying the 12% rate to a period of time when the prime rate of interest was, in general, far below 12%, such application of the statute is not necessary to compensate the Authority for delay, but rather would result in a windfall to it."

They proceed to cite in a footnote some statistics concerning the average prime rate of interest over the eleven year span from 1970 through 1980 as supportive of their claim of "windfall" and irrationality. Obviously these statistics are wholly "dehors the record" but interestingly enough if you start with $100.00 and compound it annually at the given average prime rates, you will end up at the end of the eleven years with $250.58 or an accretion of 150.58 percent. Simple interest at 12 percent per annum, over the same time frame, will yield an accretion of only 132 percent. Bethlehem has had the use of monies due the Authority for an extended period. It has been

able to compound the same, yet the Authority is limited in its recovery to simple interest. Clearly, Bethlehem has had the advantage of the use and benefit of Authority money for many years and the statute simply reduces but does not eliminate this inequity.

The appellants next seek to find some comfort in the "settled expectations" theory which they set forth at some length in their "Jurisdictional Statement" at pages 15 through 18. Stripped of all veneer, the appellants' position is simply that in making certain practical assessments as to whether it was worthwhile to appeal the trial judge's decision, they were taking for granted that an 8 percent interest factor was to be controlling at all times. This was their "settled expectation", and the assumption on which they proceeded to operate. The fragility of this assumption is best shown by the statement of this Court in *Usery* vs. *Turner Elkhorn Mining Co.* 428 U.S. 1 (1975) where at page 14 this Court said:

> "To be sure, insofar as the Act requires compensation for disabilities bred during employment terminated before the date of enactment, the Act has some retrospective effect—although, as we have noted, the Act imposed no liability on operators until 1974. And it may be that the liability imposed by the Act for disabilities suffered by former employees was not anticipated at the time of actual employment. *But our cases are clear that legislation readjusting rights and burdens is not unlawful solely because it upsets otherwise settled expectations.* See *Fleming* v. *Rhodes,* 331 U.S. 100 (1947) *Carpenter* v. *Wabash* R. Co., 309 U.S. 23 (1940); *Norman* v. *Baltimore & Ohio R. Co.,* 294 U.S. 240 (1935); *Home Bldg. & Loan Assn.* v. *Blaisdell,* 290 U.S. 398 (1934); *Louisville & Nashville R. Co.* v. *Mottley,* 219 U.S. 467 (1911). This is true even though the effect of the legislation is to impose a new duty or liability based on past acts. See *Lichter* v. *United States,* 334 U.S. 742 (1948); *Welch* v. *Henry* 305 U.S. 134 (1938); *Funkhouser* v. *Preston Co.,* 290 U.S. 163 (1933)." (Emphasis ours)

Finally, the appellants turn to some language of this Court in a footnote to *United States Trust Co.* v. *New Jersey,* 431 U.S. 1 (1977) for support. At page 21 of their Jurisdictional

Statement they wrench out of context footnote 17 appearing at page 20 of 431 U.S. Only when the footnote is read in full does the true meaning of the Court's language become clear. The following excerpts from the footnote are most enlightening:

> "It is not always unconstitutional, however, for changes in statutory remedies to affect pre-existing contracts. During the early years when the Contract Clause was regarded as an absolute bar to any impairment, this result was reached by treating remedies in a manner distinct from substantive contract obligations . . . "
>
> " . . . Yet it was also recognized very early that the distinction between remedies and obligations was not absolute. Impairment of a remedy was held to be unconstitutional if it effectively reduced the value of substantive contract rights . . . "
>
> " . . . More recent decisions have not relied on the remedy/obligation distinction, primarily because it is now recognized that obligations as well as remedies may be modified without necessarily violating the Contract Clause . . . "
>
> " . . . Although now largely an outdated formalism, the remedy/obligation distinction may be viewed as approximating the result of a more particularized inquiry into the legitimate expectations of the contracting parties. The parties may rely on the continued existence of adequate statutory remedies for enforcing their agreement, but they are unlikely to expect that state law will remain entirely static. Thus, a reasonable modification of statutes governing contract remedies is much less likely to upset expectations than a law adjusting the express terms of an agreement . . . "

Clearly then, the old distinction between remedy and obligation has not been obliterated but rather refined to mean simply that after a careful inquiry into the legitimate expectations of the parties, a reasonable modification of contract remedies will not be held invalid if it can fairly be deemed to have been reasonably foreseeable. In the instant case, it should not have been difficult for anyone to foresee or expect some

upward change in legal interest rates when the then current money market and the staggering rise in commercial interest charges are taken into consideration. For the appellants to have expected otherwise was and is simply their error.

II

THE JUDGMENT APPEALED FROM RESTS UPON AN ADEQUATE NON-FEDERAL BASIS.

The legality of imposition of retroactive interest upon judgments under state statutes is soundly based upon a wealth of "non-federal" state law.

Over the years several states have enacted statutes providing that interest at prescribed rates, often retroactively, be added to damage or monetary awards in specified judgments or decrees.

Generally the Courts have held that state legislatures may change or alter the rate of interest on judgments even retroactively without impairing any obligation of contract and without violating any federal constitutional principles.

Specifically, the Rhode Island Supreme Court has dealt with these interest questions in a number of cases by interpreting and applying Title 9-21-10 of the Revised Rhode Island General Laws of 1956 as it existed each time a question has been raised. See for example, *Foster* v. *Quigley* 94 R.I. 217, 179 A2d 494 (1962); *Kastal* v. *Hickory House, Inc.* 95 R.I. 366, 187 A2d 262 (1963); *Isserlis* v. *State Director of Public Works,* 111 R.I. 164, 300 A2d 273 (1973); *Pray* v. *Narragansett Improvement Co. et al,* R.I. , 434 A2d 923, (1981); *R.I. Turnpike and Bridge Authority* v. *Bethlehem Steel Corp. et al* R.I. , 446 A2d 752 (1982). It is fundamental that these decisions are binding upon federal courts on any question of construction or interpretation. *Cramp, Jr.* v. *Bd. of Public Instruction of Orange County, Florida* (1961) 386 U.S. 278, 82 S.Ct. 275.

The interpretation of §9-21-10 of the Revised Rhode Island General Laws of 1956 by the Rhode Island Supreme Court is best expressed in *Kastal* v. *Hickory House, Inc.,* supra.

There, the defendant objected to the imposition of interest on an execution against him because he claimed the plaintiff caused a long delay, and therefore, it would be inequitable to do so. The trial court did not agree on the ground that it was without power to do so in view of the mandatory language of Section 9-21-10. On appeal, the Rhode Island Supreme Court sustained the trial justice.

Said the court:

(Page 367) "In concluding his decision, (the trial justice) . . . based it squarely on the view that . . . he had no authority to stay . . . the running of interest, either in whole or in part."

(Page 368) "In our opinion this contention points up sharply the sole issue in the instant case. That issue is basically one of statutory construction. What did the legislature seek to accomplish by the enactment of Section 9-21-10? Did it intend to leave any room for the exercise of judicial discretion in the matter? The language of the section is unmistakably clear."

(Statute quoted)

(Page 369) "In our opinion, the statute is neither ambiguous nor equivocal. *It speaks imperatively and directly not to the court but to the clerk who is ordered to add 'to the amount of damages, interest thereon from the date of the writ***'.* This is a purely ministerial act; it contemplates no judicial intervention. The legislative fiat is explicit and admits of no conditions or reservations. *The claim for damages having been duly reduced to judgment the addition of interest is peremptory.*"

" . . . In the face of a statute so clear and unambiguous there is no room for the application of the usual canons of statutory construction."

" . . . In such a case, the statute declares itself. (Cases cited). We may not where no ambiguity exists search beyond the statute for a different meaning. (Case cited). Even hardship does not justify a court in reading into a statute something contrary to its unequivocal language. (Case cited). Only when the legislature sounds an uncertain trumpet may the court

> move in to clarify the call. But *when the call is clear and certain as it is here we may not consider whether the statute as written comports with our ideas of justice, expediency or sound public policy.* In such circumstances that is not the court's business." (Emphasis ours)

The United States District Court for the District of R. I. has also considered Title 9-21-10 on several occasions and found no federal constitutional question. It rested its approving decisions solely on the decisions of the Supreme Court of Rhode Island. See *Oresman* v. *G. D. Searle & Co.*, 388 F. Supp. 1175 (1975) and *Holmes* v. *Bateson*, 434 F. Supp. 1369 (1977). The latter case was appealed to the First Circuit Court of Appeals in Boston which sustained the decision of the District Court. See *Holmes et al.* v. *Bateson et al.*, (CA1), 585 Fed. 2d 542. (1978).

See also *Roy* v. *Starr Chopper Co.*, (CA1), 585 F. 2d 1124, (1978) an action brought in the U.S. District Court for the District of Rhode Island. Plaintiff, an employee of the defendant company, sued the defendant as a result of injuries suffered by him while in its employ. After a jury returned a verdict for the plaintiff for $348,000.00 to which was added interest, from the time of the accrual of the cause of action under the provisions of Title 9-21-10, an appeal was taken to the First Circuit Court of Appeals by the defendant company. One of the grounds was that permitting accrual of interest on the verdict under Title 9-21-10 from the date of the cause of action was unconstitutional. This argument was rejected by the Court (page 1135):

> "...(defendant) asserts that the mandatory language of the pre-judgment interest statute i.e., interest from the date of the cause of action 'shall be included', deprives defendant of its property without due process and denies it equal protection of the laws. It argues that a defendant is prejudiced by the mandatory language in those instances where dilatory tactics of the plaintiff have caused delay in going to trial. A federal court should properly apply a forum state's pre-judgment interest statute when sitting in a diversity case:" (Cases cited).

"... The Rhode Island Supreme Court (has) construed the mandatory language in the prejudgment interest statute as evincing a legislative purpose to spur defendant to settlement."

"... *We find no constitutional infirmity in the statute.* Interest statutes in Rhode Island apply to all verdicts rendered after their enactment. *Foster* v. *Quigley*, 94 R.I. 217, 179 A. 2d 494, 495 (1962). The Rhode Island statute at issue here became effective March 21, 1977; the verdict was rendered on October 6, 1977. The district court correctly allowed interest to run from the date the cause of action accrued." (Emphasis ours).

After the Circuit Court decision affirming the District Court decision with its accrued interest, the defendant filed a petition for Writ of Certiorari to the U.S. Supreme Court. This was denied February 21, 1979. See *Starr Chopper Co., Inc.* v. *Roy, et al.* 440 U.S. 916, 99 S. Ct. 1234 (1979) The situation in *Starr Chopper Co.*, supra, is very similar to the instant case and the final result there should apply equally as well here.

In passing it should be pointed out that the decisions in *Porter* v. *Clerk of the Superior Court* 368 Mass. 116, 330 N.E. 2d 206 (1975), and in *City Council of Waltham* v. *Vinciullo* 364 Mass. 624, 307 N.E. 2d. 316 (1974) heavily relied upon by the appellants in their "Jurisdictional Statement", were solely cases of *interpretation* of Massachusetts statutes by the Supreme Court of Massachusetts. No constitutional questions were raised and the decisions in those cases rest upon an "adequate non-federal basis".

CONCLUSION

We respectfully submit that;

1.) The instant appeal does not raise any substantial federal question; that *Funkhouser,* supra, is dispositive of the fundamental issues raised; that the statute under attack is neither arbitrary, capricious, nor unreasonable and does not violate any constitutional rights of the appellants, including those guaranteed by the Contract Clause or the Due Process Clause of the United States Constitution or any Amendments thereto; and,

2.) The judgment appealed from rests on an adequate non-federal basis.

Therefore, this Court should grant the appellee's motion and dismiss the appeal.

Respectfully submitted,

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